FACT SHEET

AfCFTA

Implications to Seed Sovereignty in Africa

Background

As a critical ingredient in the Agricultural value chain, seed has become one of the critical commodities whose governance is increasingly highly contested. While smallholder farmers produce over 80% of the food consumed in Africa, agriculture supply chains are increasingly dominated by seed and food barons. Indeed, under the guise of a 'new green revolution' and commercial agriculture for agro-industrialization, both food production and land control in Africa are increasingly removed from smallholder farmers (Fitzpatrick, 2015). There is also an increasing permeation of economic policies, agreements, and initiatives at both continental and national levels that consolidate corporate power in agriculture, often neglecting smallholder farmers. Unless this paradigm is rethought, these policies risk promoting corporate-managed seeds while disrupting agroecology and farmer-managed seed systems (FMSS). Moreover, contemporary trade policies focus on increasing trade shares, often leading to significant investments in corporate-managed seeds and agro-inputs like inorganic fertilizers, eroding biodiversity and disadvantaging farmers by neglecting FMSS. This is the ecosystem within which the African Continental Free Trade Area (AfCFTA) is launching.

Does the AfCFTA Hold Any Opportunities for Smallholder Farmers in Africa?

The AfCFTA potentially unites a market of over 1.3 billion people with a combined GDP exceeding US$3.4 trillion (ITC, 2022). Its proponents claim that it could boost intra-African trade by 53% (41% in agrifood, 39% in services, and 39% in industry), grow Africa's manufacturing sector by US$1 trillion (UNECA, 2021), generate $470 billion in income by 2035, create 14 million jobs, and lift 50 million Africans out of poverty (UNECA & TMEA, 2020). However, these projected opportunities are not guaranteed for smallholder farmers. In its present form, the AfCFTA focuses on large-scale industrialization, commercialization, and commodification of seed and food, often overlooking smallholder farmers.

The signing of a Memorandum of Understanding (MoU) between AGRA and the AfCFTA Secretariat to promote agri-food trade and agro-industrial development (DEVEX, 2024) exemplifies this orientation. Under its current dispensation, only a small fraction of smallholder farmers who can scale up may integrate into the corporate value chains perpetuated by the AfCFTA and the IPR Protocol, leaving millions excluded from the market dominated by a few food and seed corporations. Furthermore, while the AfCFTA could potentially increase intra-African trade in agriculture by 574% by 2030 if tariffs and non-tariff barriers are eliminated (WEF, 2024), there is no guarantee that smallholder farmers and agroecological enterprises will benefit due to the existing oligopoly in the continent's food and seed market. Indeed, under such an uneven market, the existing 56 companies who dominate agriculture and food & beverage sectors on the continent (with annual revenues above US$500 million), and of which 14 have turnovers exceeding US$1 billion (Hodder & Migwalla, 2023) stand to gain more than smallholder farmers.

Simulations suggest that eliminating non-tariff barriers (NTBs) could reduce logistics costs and increase the flow of agricultural products within Africa. By committing to progressively liberalize over 97% of product tariff lines, the AfCFTA could potentially facilitate the movement of agricultural products among State Parties. While this could provide a market for agroecological enterprises, existing preconditions like a complex standards system, the AfCFTA Tariff Book and the lack of a simplified trading regime to support territorial markets create a trading environment that excludes smallholder farmers and agroecological enterprises.

Furthermore, the blanket 97% threshold of tariff liberalization coupled with weaker safeguard measures creates a loophole for seed and food corporations to control the supply chain and market. The Rules of Origin (RoO) cumulation provisions create loopholes for corporations to dominate Africa's seed and food systems while marginalizing smallholder farmers and agroecological enterprises. The RoO allow countries to import seeds as part of cumulation[1]. For example, maize harvested in an AfCFTA State Party is regarded as wholly obtained even if the maize seed was imported from Argentina (AfCFTA Secretariat, 2022). This provision could discourage countries from supporting community seed banks, which are crucial for seed sovereignty and biodiversity. Poorly designed RoO may disrupt FMSS and affect market access for supply chain actors, increasing dependence on imported seeds.

Lastly, the rise of "supermarketization" in Africa's markets introduces cheap, unhealthy imported products, threatening territorial markets and agroecological enterprises due to inadequate government support for these markets. Moreover, standardization of agricultural products and farming methods, driven by AfCFTA's Sanitary and Phytosanitary measures and seed policies, may further consolidate corporate control over seed and food systems, undermining efforts by smallholder farmers to manage seed quality through community seed banks.

What are the Implications of AfCFTA IPR Protocol for FMSS and Seed Sovereignty

If properly crafted and implemented to safeguard and promote farmers' rights, the Protocol can partly strengthen FMSS and seed systems, ultimately improving the welfare of smallholder farmers.

Opportunities

Protection of plant varieties: Article 8 of the Protocol (Protection of New Plant Varieties) mandates State Parties to protect new plant varieties through a sui generis system that includes farmers' rights, plant breeders' rights (PBRs), and rules on access and benefit-sharing (African Union, 2024). By incorporating farmers' rights, the Protocol seeks to balance empowering farmers to save, share, and improve seeds with protecting PBRs to ensure rewards for developing new varieties. However, realising this potential requires State Parties to update the Protocol and strengthen the Annex on the Protection of New Plant Varieties to prioritize FMSS, avoiding the trap of systematic commodification of seeds that IP laws often advance.

Harmonisation of seed policies: The AfCFTA IPR protocol requires State Parties to harmonize their national regulations with the its IPR regime. Under the Protocol, protection for new plant varieties is provided through a sui generis system that includes farmers' rights, plant breeders' rights, and rules on

[1] Cumulation in RoO lets you combine materials from different free trade agreement (FTA) countries as if they originated from a single country. This makes it easier to qualify final products for preferential trade benefits within the FTA zone.

access and benefit sharing. This ensures that smallholder farmers can save, use, exchange, and sell farm-saved seeds, balancing plant breeders' rights with farmers' rights and mandating equitable sharing of benefits arising from the use of plant genetic resources. However, realizing these benefits requires a carefully crafted Annex on Plant Variety Protection that prioritizes farmers' rights.

Safeguarding Traditional Knowledge: Under Article 18 (Traditional Knowledge), State Parties must take measures to prevent and prohibit the unauthorized utilization of traditional knowledge in all IPR categories (African Union, 2024). Effective implementation of these safeguards can promote FMSS and seed sovereignty, as traditional knowledge encompasses indigenous agricultural practices and seed varieties often exploited without benefiting the communities that preserve them.

Genetic Resources and Transparency: Article 20 (Genetic Resources) mandates that IPR applicants declare the lawful acquisition of the genetic material used in developing plant varieties. This strengthens FMSS and seed sovereignty by promoting transparency and accountability. Knowing the origin of genetic material allows farmers to identify and preserve traditional varieties, which is critical given the increasing permeation of genetically modified seeds and foods in Africa's food and seed systems.

Potential Threats

Premature introduction of IPRs risks harming FMSS: For a continent where smallholder farmers control 80% of seeds (AFSA, 2024), premature implementation of stringent IPRs can exclude communities like smallholder farmers, creating uneven development. Currently, some African countries, such as Kenya, are implementing seed systems that reward private breeders while punishing smallholder farmers, subjecting them to a predatory seed system reliant on private breeders (Gordon, 2023). Instead of addressing such injustices, various provisions of the AfCFTA IPR Protocol may perpetuate them.

Vague measures on redress mechanisms for smallholder farmers: Article 25 (General Provisions) does not sufficiently provide mechanisms for seeking redress by communities and smallholder farmers in case of rights infringement. If not addressed could undermine African FMSS and agricultural trade supply chain actors, and ultimately, limit the continent's efforts to achieve seed and food sovereignty.

Poor regulation of commercially produced seed: the weak safeguard measures under these principles and the overall protocol, coupled with Most Favoured Nation (MFN)[2] and National Treatment (NT)[3] provisions may act as conduits for commercially produced

[2] The Most-Favoured Nation (MFN) provision under the Protocol provides that any advantage, favour, privilege, or immunity that a State Party grants to nationals of another State Party or Third Party concerning the protection of intellectual property rights, shall be accorded immediately and unconditionally, to the nationals of the State Parties (African Union, 2024).

[3] The National Treatment (NT) provision charges State Parties to accord, to nationals of the other State Parties treatment no less favourable than it accords to its nationals for the protection of intellectual property rights (African Union, 2024). This means that a State Party cannot discriminate against seeds from another State Party e.g. if Senegal is granting free access to millet seeds from Niger, she is obligated to grant the same treatment to Millet exports from Uganda.

seeds from other countries to flood the African market. This could undercut FMSS seed, displacing locally adapted varieties and eroding seed sovereignty by increasing dependence on external sources. Unequal competition introduced by NT is a concern because large seed companies may have a cost advantage due to economies of scale, potentially harming FMSS and undermining seed sovereignty on the continent.

Lack of biosafety provisions: The Protocol lacks biosafety provisions to guarantee smallholder farmers' right to maintain and control their own seeds while protecting FMSS from GMO contamination. This omission is significant, given that most African countries have yet to fully operationalize biosafety and biotechnology frameworks, despite the majority ratifying the UN Cartagena Protocol on Biosafety (Convention on Biological Diversity, 2024). Without these frameworks, peasant seed systems remain vulnerable to GMO contamination.

Ignoring of gender inequalities in FMSS: The AfCFTA IPR Protocol does not address existing gender inequalities in FMSS and seed governance. IPR laws and policies have historically been crafted in environments with structural gender inequalities, favouring men over women in access to land, seed, and technology. These inequalities affect women farmers and entrepreneurs by reducing their access to seeds, farm inputs, and plants. By prioritizing the rights of seed and food corporations over smallholder farmers, IPR laws exacerbate gender inequalities, perpetuating food and seed insecurity.

Conclusion and Recommendations

While the AfCFTA has potential opportunities for supporting smallholder agricultural production in Africa, these are not guaranteed. Poor negotiation and implementation, combined with the current geopolitics of seed and food governance that jeopardize FMSS, could pose significant threats. To truly benefit smallholder farmers, the AfCFTA must undergo a paradigm shift to prioritize farmers' rights, FMSS, and seed sovereignty. Only then can the AfCFTA help build an inclusive and sustainable agricultural trade environment in Africa. Therefore, State Parties should:

- The AfCFTA aims to boost regional food and seed value chains to reduce Africa's massive annual food and seed imports, aligning with CAADP aspirations. However, the continent is divided between industrial agribusiness and smallholder agroecology (GRAIN & Coulibaly, 2023). Regionalization of food and seed systems must prioritize ecological sustainability and social equity, focusing on localization and agroecology rather than merely creating long value chains vulnerable to disruptions.

- AfCFTA State Parties need to strengthen the language on disclosure of origin in the IPR Protocol. Current provisions under Article 18 (Traditional Knowledge) use best-endeavour language, creating a democratic deficit that leaves the protection of traditional knowledge and seed systems to the discretion of State Parties. Strengthening these provisions to make disclosure of origin mandatory as a precondition for granting a PVP certificate is crucial.

- Technological development under Article 17 (Emerging Technologies) is vital for improving African farming, but it primarily benefits foreign plant breeders and seed companies. African countries must enhance the capacity of small-scale farmers to participate in technological developments. Involving farmers in seed development ensures the final products are well-adapted to local environments and needs, leveraging the rich collective experience and local knowledge of smallholder farmers (Fitzpatrick, 2015).

- Article 8 on PVP should be strengthened through its Annex to regulate genetically uniform transgenic varieties by promoting biodiversity. This is critical to safeguarding and promoting farmer's seed sovereignty. Article 28 (Transit Trade) should also be reviewed to ensure trade in GM-free seeds and food or compliance with the biosafety rules of the destination country.

- AfCFTA State Parties should disassociate the protocol from the UPOV 1991 model on PVP laws, which consolidates the power of seed corporations. The AfCFTA IPR Protocol should instead align with the International Treaty on Plant Genetic Resources for Food and Agriculture (TPGRFA) provisions on smallholder farmers' rights. This can be achieved by introducing a new article on the relationship with other policies and commitments made by State Parties.

- To balance IPR and traditional knowledge related to genetic resources, the language on disclosure obligations in Articles 18, 19, and 20 should be strengthened to guarantee farmers' and local communities' entitlements to benefit-sharing payments. This will support the implementation of ITPGRFA Article 9.2(a) and (b), safeguarding genetic resources and related traditional knowledge.

- Finally, while designing and implementing the AfCFTA IPR Protocol, it is important to recall UPOV's agenda, which was set up in Europe to promote PBRs globally. Any attempt to integrate African countries into a seed system that consolidates the rights of patent owners, while undermining those of farmers and innovative FMSS, will mainly benefit foreign interests. Harmonizing intellectual property through the IP Protocol of the AfCFTA may be an opportunity to rewrite and introduce sui generis PVP instruments more suited to Africa. AfCFTA State Parties should reimagine the Pan-African Intellectual Property Organisation (PAIPO) to focus on addressing power imbalances in IPR rules.

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